

adversely affected by, a matter required to be published in the FEDERAL REGISTER under § 1206.200(a) and not so published.

(b) A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied upon, used, or cited as precedent by NASA against any member of the public only if it has been indexed and either made available or published as provided by § 1206.200(b) or if the member of the public has actual and timely notice of the terms thereof.

(c) Failure to make available an Agency record required to be made available under this part could provide the jurisdictional basis for a suit against NASA under 5 U.S.C. 552(a)(4) (B) through (G), which provides as follows:

(B) On complaint, the District Court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Agency from withholding Agency records and to order the production of any Agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such Agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the Agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3375.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any Agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether Agency personnel acted arbitrarily or capriciously

with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the Agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

Subpart 9—Annual Report

§ 1206.900 Requirements for annual report.

On or before February 1 of each year, NASA shall submit a report covering the preceding fiscal year to the Department of Justice.

PART 1207—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

1207.101 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

1207.102 Waiver of prohibition in 18 U.S.C. 208.

1207.103 Designations of responsible officials.

Subpart B—Post-Employment Regulations

1207.201 Scope of subpart.

1207.202 Exemption for scientific and technological communications.

AUTHORITY: 5 U.S.C. 7301; 18 U.S.C. 207-208; 42 U.S.C. 2473(c)(1); 5 CFR 2635.102(b); 5 CFR part 2637; 5 CFR part 2640.

SOURCE: 52 FR 22755, June 16, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 1207.101 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the National Aeronautics and Space Administration (NASA) should refer to the executive

§ 1207.102

14 CFR Ch. V (1–1–13 Edition)

branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the NASA regulation at 5 CFR part 6901 which supplements the executive branch-wide standards with respect to prohibitions and prior approval requirements applicable to certain outside employment activities, the Office of Personnel Management provisions on employee responsibilities and conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

[59 FR 49338, Sept. 28, 1994]

§ 1207.102 Waiver of prohibition in 18 U.S.C. 208.

(a) *Prohibition.* Employees are prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to their knowledge, they, or any person whose interests are imputed to them under the statute, have a financial interest, if the particular matter will have a direct and predictable effect on that interest.

(b) *Specific waiver available.* A NASA employee may request a waiver of this prohibition. NASA may grant a specific waiver of the prohibition only if the Agency determines that the employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services. The waiver must be obtained before the employee participates in the matter.

(c) *Officials authorized to make waiver determinations.* (1) For the employees listed below, waivers must be approved by the Administrator or Deputy Administrator. No further delegation is authorized.

(i) Employees who are required by 5 CFR 2634.202 to file Public Financial Disclosure Reports;

(ii) Employees who are appointed under authority of section 203(c)(2) ("NASA Excepted Positions") or section 203(c)(10) ("Alien Scientists") of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(2) and 2473(c)(10));

(iii) Astronauts and astronaut candidates;

(iv) Chief Counsel; and

(v) Procurement Officers.

(2) For all other Headquarters employees, the Associate Administrator for Headquarters Operations may approve waivers of 18 U.S.C. 208. This authority may not be redelegated.

(3) For all other Center employees, the Center Director or Deputy Center Director may approve waivers of 18 U.S.C. 208. This authority may not be redelegated.

(d) *Procedures for specific waiver.* The employee's request for a waiver must be in writing. The request must describe the particular matter involved, the relevant duties of the employee, and the exact nature and amount of the disqualifying financial interest.

(1) *Headquarters employees.* (i) Those Headquarters employees described in paragraph (c)(1) of this section must submit their requests to the Official-in-Charge of the Headquarters office in which they are employed and to the General Counsel for concurrence. The Official-in-Charge will then submit the request to the Administrator with recommendations on the proposed waiver.

(ii) Other Headquarters employees must submit their requests to the Associate General Counsel (General) for concurrence, and to the Associate Administrator for Headquarters Operations for approval.

(2) *Center employees.* (i) Those Center employees described in paragraph (c)(1) of this section must submit their requests to the Center Chief Counsel for concurrence and then to the Director of the Center where they are employed. The Center Director will provide the request, with recommendations, to the appropriate Enterprise Associate Administrator and to the General Counsel for review and submission to the Administrator.

(ii) Other Center employees must submit their requests to the Center Chief Counsel for concurrence, and then to their Center Director or Deputy Center Director for approval.

(3) Copies of approved waivers must be forwarded to the Associate Administrator for Human Resources and Education, the General Counsel, and the Office of Government Ethics.

(e) *Cross-references.* For regulations concerning general waiver guidance